

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BROWN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-379E
)	
U.S. JUSTICE DEPARTMENT,)	JUDGE MCLAUGHLIN
BUREAU OF PRISONS, FCI MCKEAN)	MAGISTRATE JUDGE BAXTER
WARDEN JOHN J. LAMANNA,)	
REGIONAL DIRECTOR D. SCOTT)	Electronically Filed
DODRILL, MEDICAL DIRECTOR,)	
DIRECTOR HARLEY G. LAPPIN,)	
)	
Defendants.)	

**MOTION TO EXTEND TIME FOR FILING
A RESPONSIVE PLEADING AND/OR DISPOSITIVE MOTION**

Pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure, defendants the United States Justice Department, the Bureau of Prisons, FCI McKean Warden John J. LaManna, Regional Director D. Scott Dodrill, Medical Director and Director Harley G. Lappin, by their undersigned counsel, hereby file this Motion to Extend Time for Filing a Responsive Pleading and/or Dispositive Motion, and in support thereof state as follows:

1. *Pro se* prisoner Demetrius Brown filed a Complaint in the above-captioned action on December 28, 2005 under the provisions of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.* His motion to file an Amended Complaint was granted on May 5, 2005.

2. Plaintiff's Amended Complaint seeks \$10 million in damages for personal injuries allegedly caused by plaintiff's alleged exposure to secondhand smoke during his incarceration at a federal prison located in McKean County, Pennsylvania ("FCI McKean").

3. Defendants' responsive pleading or dispositive motion is currently due on December 19, 2005.

4. Defendants need additional time, however, to respond to the Amended Complaint. In particular, an extension is needed because of the litigation demands of defense counsel, and because the docket sheet has recently been changed to add Newton E. Kendig as a defendant. Neither the Complaint nor the Amended Complaint specifically named Dr. Kendig; rather, plaintiff named an unnamed "Medical Director."

5. Dr. Kendig is an individual who is apparently being sued as a result of actions taken during his federal employment with the Federal Bureau of Prisons and, as a result, he is currently requesting representation in this action from the Department of Justice. The United States Attorney, in turn, may not represent the individual defendants until such representation requests are approved by the Department of Justice.

6. To date, such approval has not yet been received. .

7. Defendants therefore request a second extension of fourteen (14) days, or until January 2, 2006, to file their responsive pleading and/or dispositive motion to plaintiff's Amended Complaint.

8. Such a brief extension will not unduly delay this litigation.

9. Neither this motion, the limited representation by the Department of Justice for purposes of this motion, nor the individual defendants' requests for representation are intended to waive any defense which may be asserted in this case.

10. Plaintiff is a *pro se* inmate and, as a result, has not been contacted regarding his consent or opposition to this motion.

WHEREFORE, defendants respectfully request that the Court grant their request for a fourteen (14) day extension, or until January 2, 2006, to file their responsive pleading and/or dispositive motion to plaintiff's Amended Complaint.

A proposed order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Megan E. Farrell
MEGAN E. FARRELL
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PA ID # 76972

Counsel for Defendants

Dated: December 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this December 14, 2005, a true and correct copy of the within Defendants' Motion to Extend Time for Filing a Responsive Pleading and/or Dispositive Motion was served via first-class mail upon the following:

Demetrius Brown
#21534-039
FCI Raybrook
P.O. Box 9001
Raybrook, NY 12977

/s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney